

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

ROE, JOHN, et al.,	:	
	:	
Plaintiffs,	:	Case No. 3:15-cv-00111-TMR
	:	
-vs-	:	Judge Hon. Thomas M. Rose
	:	
AMAZON.COM, et al.,	:	Magistrate Michael R. Merz
	:	
Defendants.	:	

ANSWER OF DEFENDANT BARNES & NOBLE INC.

For its Answer to Plaintiffs' Complaint (the "Complaint"), Defendant Barnes & Noble Inc. ("Barnes & Noble") states as follows:

FIRST CLAIM

1. Barnes & Noble lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 1 of the Complaint and therefore denies the same.

2. Barnes & Noble admits that it is a legal entity that transacts business in the State of Ohio and that the Court has personal jurisdiction over it but denies that it committed any tortious act of acts against the Plaintiffs. Responding further, Barnes & Noble lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 2 of the Complaint and therefore denies the same.

3. Barnes & Noble admits that a book titled *A Gronking to Remember* was written and published and that it has been made available at various times for sale on its website and in its stores. Responding further, Barnes & Noble lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 3 of the Complaint and therefore denies the same.

4. Barnes & Noble denies that it appropriated any photograph of the Plaintiffs for commercial gain. Responding further, Barnes & Noble lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 4 of the Complaint and therefore denies the same.

5. Barnes & Noble lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 5 of the Complaint and therefore denies the same.

6. Barnes & Noble states that no response is necessary to the purported conclusion of law regarding Plaintiffs' photograph constituting their *persona*. To the extent a response is required, Barnes & Noble denies the same. Responding further, Barnes & Noble lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in Paragraph 6 of the Complaint and therefore denies the same.

7. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 7 of the Complaint.

8. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 8 of the Complaint.

9. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 9 of the Complaint.

10. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 10 of the Complaint.

11. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 11 of the Complaint.

SECOND CLAIM

12. For its response to Paragraph 12 of the Complaint, Barnes & Noble incorporates herein by reference its responses to Paragraphs 1 through 11 of the Complaint.

13. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 13 of the Complaint.

14. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 14 of the Complaint.

15. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 15 of the Complaint.

THIRD CLAIM

16. For its response to Paragraph 16 of the Complaint, Barnes & Noble incorporates herein by reference its responses to Paragraphs 1 through 15 of the Complaint.

17. Barnes & Noble states that no response is necessary to this purported conclusion of law. To the extent a response is required, Barnes & Noble denies all allegations in Paragraph 17 of the Complaint.

18. Barnes & Noble denies each and every allegation of the Complaint not expressly admitted herein.

FIRST AFFIRMATIVE DEFENSE

19. Plaintiffs' Complaint fails to state a claim upon which relief can be granted against Barnes & Noble.

SECOND AFFIRMATIVE DEFENSE

20. Plaintiffs' claims against Barnes & Noble are barred, in whole or in part, by the First Amendment to the United States Constitution.

THIRD AFFIRMATIVE DEFENSE

21. Plaintiffs' claims against Barnes & Noble are barred, in whole or in part, by the incidental use doctrine.

FOURTH AFFIRMATIVE DEFENSE

22. Plaintiffs' claims against Barnes & Noble are barred, in whole or in part, by Ohio Revised Code § 2741.09.

FIFTH AFFIRMATIVE DEFENSE

23. Plaintiffs' claims against Barnes & Noble are barred, in whole or in part, because Plaintiffs' likenesses lack any legally protectable commercial value.

SIXTH AFFIRMATIVE DEFENSE

24. Plaintiffs' claims against Barnes & Noble are barred, in whole or in part, because Plaintiffs have failed to name all parties necessary to the resolution of the claims asserted.

SEVENTH AFFIRMATIVE DEFENSE

25. Barnes & Noble reserve the right to assert and pursue additional defenses which may become known through discovery or otherwise.

WHEREFORE, having fully answered, Barnes & Noble states that Plaintiffs are not entitled to the relief prayed for nor are they entitled to any relief whatsoever. Barnes & Noble therefore requests that:

1. Plaintiffs' Complaint be dismissed with prejudice at Plaintiffs' cost; and
2. Barnes & Noble be awarded its costs incurred in defending this action along with such other relief as this Court deems equitable and just.

Respectfully submitted,

s/ Aneca E. Lasley

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of April, 2015, the foregoing document was filed electronically with the Clerk of Court using the CM/ECF system, and notice of this filing will be sent to all attorneys of record by operation of the Court's electronic filing system.

s/ Aneca E. Lasley

Aneca E. Lasley (0072366)

Attorney for Barnes & Noble, Inc.